

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 2767/99 to 2771/99 and 2773/99 to 2775/99

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL  
and  
Hon'ble MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
NABUMIYA JIVAMIYA BORADIYA

Versus

STATE OF GUJARAT  
-----

Appearance:

MR MUKESH R SHAH for Petitioner  
MR RC KODEKAR, AGP for Respondents  
-----

CORAM : MR.JUSTICE J.M.PANCHAL  
and  
MR.JUSTICE M.C.PATEL

Date of decision: 22/08/2000

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the claimants have challenged judgment and award dated August 10, 1998 rendered by the learned Assistant Judge, Sabarkantha at Himatnagar, in Land Acquisition Cases No. 3387/89 to 3391/89 and 3393/89 to 3395/89 by which the claimants are awarded compensation at the rate of Rs. 16/- per sq.mt. for irrigated lands as well as Rs. 13/- per sq.mt. for non-irrigated lands and claimed that they should have been awarded compensation at the rate of Rs. 40/- per sq.mt. for the acquired lands.

2. A proposal was received by the Government to acquire agricultural lands of Modasa Town for the public purpose of Modasa - Titoi - Shamalaji Diversion Road. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of Modasa town were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on January 2, 1986. The land owners were served with notices under section 4 of the Act and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Sabarkantha at Himatnagar had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of Modasa - Titoi - Shamalaji Diversion Road. Therefore, declaration under section 6 of the Act was made which was also published in Official Gazette on January 19, 1987. Thereafter, interested persons were served with notices under section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of (i) Rs. 675/- per Are for the lands which were subject matter of Land Acquisition Case No.3387/89, (ii) Rs. 700/- per Are for the lands which were subject matter of Land Acquisition Case No.3388/89, (iii) Rs.400/- per Are with reference to lands which were subject matter of Land Acquisition Case No. 3389/89, (iv) Rs. 500/- per Are with reference to lands which were subject matter of Land acquisition Case No.3390/89,

(v) Rs. 700/- per Acre for the lands which were subject matter of Land Acquisition Case No.3391/89, and (vi) Rs.500/- per Acre for the lands which were subject matter of Land Acquisition Case No. 3392/89 to 3395/89, by his award dated January 18, 1989. The claimants were dissatisfied with the offer of compensation and did not accept the award. They filed applications under section 18 of the Act and required the Special Land Acquisition Officer to refer the matters to the Court for the purposes of determination of compensation. Accordingly, references were made to the District Court, Sabarkantha at Himatnagar, which were numbered as Land Acquisition Cases No. 3387/89 to 3391/89 and 3393/89 to 3395/89.

3. In the reference applications it was pleaded by the claimants that the lands acquired were highly fertile and they were able to raise crops round the year. According to them, the offer of compensation made by the Special Land Acquisition Officer was meagre and they were entitled to compensation at the rate of Rs.. 40/- per sq.mt. What was claimed was that in view of the potentiality of the lands acquired for use other than agricultural, they were entitled to more compensation.

4. On registration of the references, necessary notices were issued to the respondents, which were duly served, but no reply was filed by any of the respondents and they had represented their case through Government Pleader.

5. In view of the averments made in the reference applications, necessary issues for determination were raised by the Reference Court at Exh.7. On behalf of the claimants, claimant of Land Acquisition Case No. 3391/89 i.e. Mohanbhai Revabhai Patel was examined at Exh.16. In his deposition on oath, the witness stated that the lands acquired were irrigated as well as highly fertile and each claimant was raising three crops in a year. The witness asserted before the Court that each claimant was earning Rs. 1 lac per Acre as profit. The witness referred to development which had taken place in Modasa town and claimed that agricultural lands which were acquired for construction of Mazum Irrigation Scheme, were adjacent to the lands acquired. The witness produced previous award of the Reference Court rendered in Land Reference Case No. 1221/87 at Exh.11 in order to substantiate his claim for higher compensation. The witness also produced another award of the reference court rendered in Land Acquisition Case No. 3399/89 at Exh.23 and claimed that the claimants were entitled to compensation as demanded in reference applications. In

cross-examination, the witness denied the suggestion made on behalf of the acquiring authorities that the lands acquired were at a distance of 20 to 25 KMs. from Modasa town. The witness also denied the suggestion made on behalf of the acquiring authorities that the lands acquired were far away from the lands which were subject matter of previous award Exh.11. We may state that no evidence either oral or documentary was produced on behalf of the acquiring authorities.

4. On appreciation of evidence led by the claimants, the reference court deduced that previous awards of the reference court produced at exhs. 11 & 23 were relevant for the purposes of determining compensation of the lands acquired in the present case. The reference court noticed judgment of Division Bench of Gujarat High Court in FABRICS PVT. LTD. v. SPECIAL LAND ACQUISITION OFFICER, KAIRA, 12 GLR 319, where the principle of law laid down is that while determining valuation of the land, instances of sale of small areas should be taken into consideration after making suitable deduction. The reference court was of the view that the lands which were covered by previous awards Exhs.11 & 23 had potentiality for use as non-agricultural lands and, therefore, while determining compensation of the lands acquired in the present case, 50% deduction should be made from the valuation of lands as indicated in exhs.11 & 23. In exhs.11 & 23, compensation was awarded to the claimants at the rate of Rs. 32/- per sq.mt. for irrigated lands and Rs.26/- per sq.mt. for non-irrigated lands and, therefore, after deducting 50% from the said rates, the reference court has held that the claimants are entitled to compensation at the rate of Rs.16/- per sq.mt. for irrigated lands and Rs.13/- per sq.mt. for non-irrigated lands, by the impugned award giving rise to the present appeals.

5. Mr. M.R.Shah, learned counsel for the claimants contended that the lands which were subject matter of previous award produced at Exh.23 were acquired pursuant to publication of notification under section 4(1) of the Act on January 2, 1986 and as the lands which are subject matter of present First Appeals, were also acquired by that very notification, the claimants ought to have been awarded compensation at the rate of Rs. 32/- per sq.mt. The learned counsel maintained that reliance placed by the reference court on the decision rendered in the case of FABRICS PVT. LTD. (supra) for deducting 50% from the rate as indicated in Exh.23 is misplaced, inasmuch as the claimants in this case have not relied upon sale instances relating to small pieces of lands for the

purpose of claiming higher compensation. The learned counsel pointed out that Exh.23 was subject matter of challenge in First Appeals No.1913/99 to 1920/99 and as those appeals were dismissed by Division Bench comprising M.R.Calla & Pradip Kumar Sarkar, JJ. vide judgment dated December 22, 1999, the claimants in these appeals should be awarded compensation at the rate of Rs.40/- per sq.mt.

6. Mr. R.C.Kodekar, learned A.G.P. submitted that having regard to different locations of the lands acquired, the reference court was justified in placing reliance on the decision rendered in the case of FABRICS PVT.LTD. (supra) and deducting 50% from the rate as indicated in Exh.23 and, therefore, the appeals should be dismissed.

7. We have taken into consideration record and proceedings received by this Court pursuant to order dated July 5, 2000. In these appeals, we are concerned with determination of compensation of agricultural lands bearing survey Nos. 209, 210, 214, 219/2, 219/4, 245, 292, 295, 218/1 & 218/2 of Modasa town. It may be stated that by notification issued under section 4(1) of the Act which was published in the Government Gazette on January 2, 1986, agricultural lands bearing survey nos.291/1, 296/4, 296/5, 298/6, 298/7, 419/2, 423, 425 and 480 of Modasa town were also acquired. Therein also, compensation at different rates which are mentioned earlier was offered by the Special Land Acquisition Officer vide his award dated January 18, 1989. Feeling aggrieved by the said offer, the claimants who were owners of survey nos.291/1, 296/4, 296/5, 298/6, 298/7, 419/2, 423, 425 and 480 had demanded references and the reference court in Land Acquisition Cases No.3396/89 to 3403/89 had determined compensation at the rate of Rs.32/- per sq.mt. for irrigated lands and Rs. 26/- per sq.mt. for non-irrigated lands by award dated March 30, 1998. As observed earlier, Mohanbhai Revabhai Patel, who was claimant in Land Acquisition Case No.3391/89, was examined at Exh.16 and had asserted before the Court that all the lands which were acquired pursuant to notification issued under section 4(1) of the Act on January 2, 1986, were similar in all respects. No rebuttal evidence was led by the acquiring authorities. In fact, acquiring authorities had not even cared to file reply to the reference applications. Therefore, the conclusion reached by the reference court that Exh.23 is relevant for the purposes of determining market value of the lands which were covered by the same notification, cannot be said to be erroneous in any manner. However, in our opinion, reference court was not justified in

making deduction of 50% from the rate indicated in Exh.23 on the ground that the principle laid down by the Division Bench of the High Court in FABRICS PVT. LTD. (supra) was applicable to the facts of the case. In the said case, what is laid down by the Division Bench is that while determining compensation of the land, instances of sale of small areas can be taken into consideration, but suitable deductions should be made. We notice that in this case the claimants have not based their claim for higher compensation on any sale instance and are relying upon previous awards of the reference court. Therefore, the ratio laid down in FABRICS PVT.LTD. (supra) could not have been pressed into service for justifying deduction of 50% from the rate indicated in Exh.23. Though Exh.23 was with reference to lands which were acquired by the same notification, it was earlier in point of time and being previous award, was relevant for the purpose of determining compensation of the lands which are subject matter of present appeals. It is well settled that earlier award of the reference court in respect of the similar or adjacent lands and which has become final between the parties, can be taken into consideration for the purpose of ascertaining market value of the lands acquired by that very notification or subsequently. As noticed earlier, Exh.23 has become final between the parties, inasmuch as First Appeals No. 1913/99 to 1920/99, which were directed against the award dated March 30, 1998 rendered in Land Acquisition Cases No.3396/89 to 3403/89, were dismissed by the Division Bench comprising M.R.Call & Pradip Kumar Sarkar, JJ. vide judgment dated December 22, 1999. The result is that the appeals will have to be allowed holding that the claimants are entitled to compensation in terms of previous award produced at Exh.23.

For the foregoing reasons, the appeals succeed. It is held that the claimants would be entitled to compensation at the rate of Rs. 32/- per sq.mt. for irrigated lands and Rs.26/- per sq.mt. for non-irrigated lands. Rest of the directions contained in the impugned common award are not disturbed and are hereby upheld. The appeals are partly allowed accordingly, with no order as to costs. Office is directed to draw decree in terms of this judgment.

(J.M.Panchal,J.)

( M.C.Patel,J. )

(patel)

